

REPORT OF THE COMMITTEE ON ZONING AND HOUSING

Voting Members:

Kymberly Marcos Pine, Chair; Trevor Ozawa, Vice-Chair;
Carol Fukunaga, Ann H. Kobayashi, Joey Manahan

Committee Meeting Held
October 18, 2018

Honorable Ernest Y. Martin
Chair, City Council
City and County of Honolulu

Mr. Chair:

Your Committee on Zoning and Housing, which considered Resolution 18-206 entitled:

"RESOLUTION GRANTING EXEMPTIONS FROM CERTAIN REQUIREMENTS RELATING TO THE HALE MAKANA O MAILI AFFORDABLE HOUSING PROJECT AT MAILI, OAHU, HAWAII TAX MAP KEY 8-7-001: 016,"

transmitted by Departmental Communication 614 (2018) from the Department of Planning and Permitting ("DPP"), dated September 10, 2018, reports as follows:

The purpose of the Resolution 18-206 is to authorize, pursuant to Section 201-H38 of the Hawaii Revised Statutes ("HRS"), exemptions from certain fees, construction, and development requirements relating to Hale Makana O Maili, an affordable multi-family rental housing project located in Maili and identified as Tax Map Key 8-7-001: 016 (the "Project").

The DPP processed the 201H application, and transmitted the requested exemptions to the Council by Departmental Communication 614 (2018), dated September 10, 2018.

CITY COUNCIL

CITY AND COUNTY OF HONOLULU
HONOLULU, HAWAII

ADOPTED ON

OCT 30 2018

COMMITTEE REPORT NO. **359**

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PROJECT DESCRIPTION

Laulima Development, LLC (the "Applicant") proposes to develop an affordable multi-family rental housing project on approximately 2.78 acres of land in Maili. The Project involves the development of 52 rental apartment units (51 affordable rental units and one manager unit) in six two-story buildings; a resource center (including management offices, a multi-purpose room, a conference room, a restroom, a storage area, a laundry room, outdoor storage, and a maintenance shed); 5,720 square feet of common open space (consisting of a park and community garden, which will be used to satisfy park dedication requirements); and a surface parking lot with 71 parking stalls. The Project also involves the retention and renovation of six of 10 existing single-family dwelling units (one dwelling will be relocated), to be sold at market rate. The remaining four existing dwellings will be demolished.

51 rental apartments (88 percent of the Project's total 58 dwelling units) will be affordable units made available to households earning 60 percent or less of the area median income for Honolulu, and will remain affordable for a minimum of 65 years.

REQUESTED EXEMPTIONS

The resolution approves exemptions from plan review fees, building permit fees, grading and grubbing permit fees, Honolulu Fire Department plan review fees, wastewater system facility charges, and water system facility fees. The resolution also approves certain exemptions from the Land Use Ordinance, including application of the A-1 Low Density Apartment District development standards, yard requirements, and off-street parking and loading requirements. The resolution further approves certain exemptions from street improvements and park dedication requirements.

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TESTIMONY

At your Committee's meeting on October 18, 2018, the Applicant's agent provided a brief presentation of the Project. The DPP Acting Director testified in support of the Project. No oral or written public testimony was received.

DISCUSSION OF EXEMPTIONS

In the discussion of the requested exemptions, representatives of the DPP and your Committee's members agreed that the Project would be an important step towards meeting Honolulu's affordable housing goals.

COMMITTEE AMENDMENTS

After discussion, your Committee amended the resolution to a CD1 version that makes the following amendments:

- A. Revises the title to use the term "authorizing" instead of "granting."
- B. In the first, second, and new third WHEREAS clauses, clarifies the description of the Project.
- C. In the fourth WHEREAS clause of the CD1, adds that the affordable rental apartment units will remain affordable for a minimum of 65 years.
- D. Adds a new fifth WHEREAS clause to provide that the Project is eligible to receive consideration under the City's rules regulating implementation of HRS Section 201H-38.

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- E. Adds that the Council received the Project's preliminary plans and outline specifications on September 21, 2018, by Departmental Communication 614 (2018).
- F. Clarifies that the Project meets the intent of HRS Chapter 201H, and the minimum requirements of health and safety.
- G. Reorganizes the exemptions granted under the resolution into the following categories:
- Application Fees and Infrastructure and/or Public Works Fees and Charges
 - Fire Department Plan Review Fees
 - Board of Water Supply Rules and Regulations
 - Park Dedication Ordinance Requirements
 - Land Use Ordinance
 - Street Improvement Requirements
- H. Clarifies the language for the exemptions and details the extent of the exemptions requested. Provides for an exemption from payment of wastewater system facility charges and water system facility fees (instead of a deferral).
- I. Removes the BE IT FURTHER RESOLVED clause that lists conditions of approval recommended by the DPP, and incorporates the conditions into the appropriate sections of the Attachment 1 Development Agreement.
- J. Adds a BE IT FURTHER RESOLVED clause to provide that references to specific statutes, ordinances, or regulations include any respective successor statutes, ordinances or regulations.

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- K. Adds a BE IT FURTHER RESOLVED clause to provide that the resolution supersedes Existing Use Permit No. 1999/EU-18 in its entirety.
- L. Revises the BE IT FURTHER RESOLVED clause that requires the Applicant to obtain a development permit for the Project within two years after adoption of the resolution, to instead provide that the resolution is null and void unless construction of the Project commences no later than 24 months after the effective date of the resolution.
- M. In the fifth to the last BE IT FURTHER RESOLVED clause, adds that the final plans and specifications for the Project constitute the zoning, building, construction, and subdivision standards for the Project.
- N. In the second to the last BE IT FURTHER RESOLVED clause, deletes authorization for Applicant Laulima Development, LLC to execute the Development Agreement.
- O. Replaces the Attachment 1 Development Agreement with a revised Development Agreement that, among other things,
- Clarifies the definition of "project";
 - Adds a provision to specify that all affordable rental apartment units must remain affordable for not less than 65 years;
 - Adds the conditions of approval recommended by the DPP as obligations of the Developer in appropriate sections;
 - Removes provisions that prohibit City representatives and agents from interfering "with work in progress at the Project";
 - Details the purpose for the City's annual monitoring inspections of the Project after completion;

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- Removes the provision regarding the satisfactory form of report submitted to another entity (because all reports will be submitted to the City);
- Removes provisions regarding an extension of the deadline to commence Project construction;
- Adds the duty to "defend" in the indemnification provision;
- Requires the Developer to commence efforts to cure any default within the required period;
- Conforms the provision relating to construction of the Agreement to the standard provision used in development agreements;
- Adds an Exhibit A legal description of the Project.

P. Makes miscellaneous technical and nonsubstantive amendments to the resolution and the Development Agreement.

COMMITTEE FINDINGS AND RECOMMENDATIONS

Your Committee finds that the housing benefits to be provided by the Project justify the exemptions authorized by this resolution, as amended in the foregoing CD1. Accordingly, your Committee acts favorably on this Resolution, as amended.

CITY COUNCIL
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HONOLULU, HAWAII

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Your Committee on Zoning and Housing is in accord with the intent and purpose of Resolution 18-206, as amended herein, and recommends its adoption in the form attached hereto as Resolution 18-206, CD1. Ayes: Pine, Fukunaga, Kobayashi, Ozawa – 4; Noes: None; Excused: Manahan - 1.)

Respectfully submitted,



Committee Chair

At the 10/30/18 Special Council meeting, the Resolution was amended and subsequently adopted as Resolution 18-206, CD1, FD1.

CITY COUNCIL

CITY AND COUNTY OF HONOLULU
HONOLULU, HAWAII

ADOPTED ON

OCT 30 2018

COMMITTEE REPORT NO. **359**



RESOLUTION

AUTHORIZING EXEMPTIONS FROM CERTAIN REQUIREMENTS RELATING TO THE HALE MAKANA O MAILI AFFORDABLE HOUSING PROJECT AT MAILI, OAHU, HAWAII, TAX MAP KEY 8-7-001: 016.

WHEREAS, the Laulima Development, LLC, a Hawaii limited liability company (the "Applicant"), proposes to develop an affordable multi-family rental housing project and renovate six existing for-sale single family dwellings, known as Hale Makana O Maili, on approximately 2.78 acres of land zoned R-5 Residential District, owned by Schuyler E. Cole TR, Marilyn Cole TR, Christopher Cole Family TR, Monique Cole Family TR, and Michelle Apperson Family TR, and located in Maili, identified as Tax Map Key 8-7-001: 016 (the "Project"); and

WHEREAS, the Project involves the development of 52 apartment units (51 affordable rental units and one manager unit) in six two-story buildings, a resource center; 5,720-square feet of common open space consisting of a park and community garden, and a surface parking lot with 71 off-street parking stalls; and

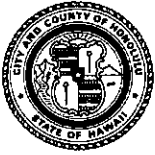
WHEREAS, the Project also involves the retention and renovation of six of the 10 single-family dwellings that currently exist on the Project site, which will be sold at market rate; and

WHEREAS, the Project's 51 affordable rental units will be affordable to households earning from 30 to 60 percent of the area median income ("AMI") for Honolulu, with the majority of apartments in the 60 percent AMI category, and will remain affordable for a minimum of 65 years; and

WHEREAS, the Project is eligible to receive consideration under the City's rules regulating implementation of Section 201H-38 of the Hawaii Revised Statutes ("HRS"), which require that at least 50 percent of a project's total units must be available to households earning at or below 80 percent of the AMI; and

WHEREAS, the City Council is empowered and authorized to approve the Project, which may include exemptions from statutes, ordinances, charter provisions, and rules of any government agency relating to planning, zoning, construction standards for subdivision, development and improvement of land, and the construction of units thereon pursuant to HRS Sections 46-15.1 and 201H-38; and

WHEREAS, the City Council has reviewed the preliminary plans and outline specifications dated June 18, 2018, prepared by Architects Hawaii Limited, and submitted to the Council by the Department of Planning and Permitting ("DPP") on September 21, 2018, by Departmental Communication 614 (2018); and



RESOLUTION

WHEREAS, the Project is consistent with the housing and community development goals and objectives of the City; and

WHEREAS, the granting of the exemptions is necessary for the timely and successful implementation of the Project; and

WHEREAS, the exemptions meet the intent of HRS Chapter 201H, and the minimum requirements of health and safety; now, therefore,

BE IT RESOLVED by the City Council of the City and County of Honolulu that it approves the Project, which approval includes exemptions and deferrals from certain requirements for the Project as set forth in the preliminary plans and specifications referenced above, as generally identified below:

Application Fees and Infrastructure and/or Public Works Fees and Charges

1. Exemption from Section 18-6.1 of the Revised Ordinances of Honolulu 1990 ("ROH"), to allow an exemption from payment of plan review fees, estimated at \$9,089.
2. Exemption from ROH Section 18-6.2, to allow an exemption from payment of building permit fees, estimated at \$45,442.
3. Exemption from ROH Section 14-14.4, to allow an exemption from grading, grubbing, and stockpiling permit fees, estimated at \$4,550.
4. Exemption from ROH Sections 14-10.1 and 14-10.3, to allow an exemption from payment of wastewater system facility charges, estimated at \$51,984.

Fire Department Plan Review Fees

5. Exemption from ROH Section 20-1.1, to allow an exemption from Fire Department plan review fees, estimated at \$4,544.



RESOLUTION

Board of Water Supply Rules and Regulations

6. Exemption from Sections 1-102, 2-202(2) and 2-202(3) of the Board of Water Supply Rules and Regulations, to allow an exemption from payment of water system facility fees.

Park Dedication Ordinance Requirements

7. Exemption from ROH Chapter 22, Article 7, to allow an exemption from park dedication requirements for the six for-sale single-family dwellings, totaling approximately 2,100 square-feet of park space, or payment of an equivalent in-lieu fee, estimated at \$40,500.

Land Use Ordinance ("LUO")

8. Exemption from LUO Sections 21-3.70 and 21-3.70-1, and Tables 21-3 and 21-3.2, to allow for the application of the A-1 Low Density Apartment District development standards to the Project. Multifamily dwellings are not permitted uses in the R-5 Residential District, and the Project does not meet the R-5 Residential District development standards for lot area, setbacks, and height.
9. Exemption from LUO Table 21-3.3, to allow the Project's surface parking lot to encroach five feet into the 10-foot front and side yards required in the A-1 Low Density Apartment District.
10. Exemption from LUO Table 21-6.1, to allow the Project to provide fewer than the 80 total off-street parking stalls (75 resident plus 5 guest stalls) required for multifamily dwellings. The Project will provide 71 total off-street parking stalls (60 resident plus 11 guest).
11. Exemption from LUO Sections 21-6.100 and 21-6.120(b), to allow a reduction of the 12-foot by 35-foot minimum horizontal dimensions for the loading space required for multifamily dwellings. The Project will provide for one loading space with 8.5-foot by 19-foot minimum horizontal dimensions.



RESOLUTION

Street Improvement Requirements

12. Exemption from ROH Chapter 14, Article 18, relating to concrete sidewalk, curb, and gutter development standards, to allow for the Project's five-foot wide asphalt sidewalk in the City right-of-way along Kuaaupuni Street to have no curb or gutter.

BE IT FURTHER RESOLVED that references to specific statutes, ordinances, or regulations include any respective successor statutes, ordinances or regulations; and

BE IT FURTHER RESOLVED that this resolution supersedes Existing Use Permit No. 1999/EU-18 in its entirety; and

BE IT FURTHER RESOLVED that this resolution is null and void unless construction of the Project commences no later than 24 months after the effective date of this resolution; and

BE IT FURTHER RESOLVED that the exemptions granted for this Project are not transferable to any other real property; and

BE IT FURTHER RESOLVED that the final plans and specifications for the Project constitute the zoning, building, and construction standards for the Project and are approved if those plans and specifications do not substantially deviate from the preliminary plans and outline specifications submitted to the Council; provided that minor modifications to the design character of the building, and/or landscaping, may be approved by the DPP, if such modifications are consistent with the prevailing neighborhood character; and

BE IT FURTHER RESOLVED that no action may be prosecuted or maintained against the City and County of Honolulu, its officials or employees, on account of actions taken by them in reviewing or approving the plans and specifications, or in granting the exemptions listed herein; and

BE IT FURTHER RESOLVED that the DPP Director is authorized to execute the Development Agreement substantially in the form attached hereto as Attachment 1 and made a part hereof, pursuant to the terms, conditions, and provisions approved as to form and legality by the Corporation Counsel as being necessary, advisable, or desirable for the purpose of carrying out this resolution; and



CITY COUNCIL
CITY AND COUNTY OF HONOLULU
HONOLULU, HAWAII

No. 18-206, CD1

RESOLUTION

BE IT FURTHER RESOLVED that the DPP Director is authorized to execute any incidental or related documents to carry out the transactions described above, so long as said documents do not increase either directly or indirectly the financial obligations of the City; and

BE IT FINALLY RESOLVED that copies of this resolution be transmitted to: Kathy K. Sokugawa, Acting Director, Department of Planning and Permitting, 650 South King Street, 7th Floor, Honolulu, Hawaii 96813; and Laulima Development, LLC, 1187 Bishop Street, Suite 907, Honolulu, Hawaii 96813.

INTRODUCED BY:

Ernest Martin (br)

DATE OF INTRODUCTION:

September 24, 2018
Honolulu, Hawaii

Councilmembers

DEVELOPMENT AGREEMENT

HALE MAKANA O MAILI

1. DATE OF THIS AGREEMENT

_____, 2018

2. PARTIES

City and County of Honolulu
Honolulu Hale
530 South King Street
Honolulu, Hawaii 96813

With copy to: Department of Planning and Permitting
650 South King Street, 7th Floor
Honolulu, Hawaii 96813

Laulima Development, LLC
1188 Bishop Street, Suite 907
Honolulu, Hawaii 96813

3. DEFINITIONS

- A. "Area Median Income" or "AMI" means the median income determined by the United States Department of Housing and Urban Development annually for the Honolulu Metropolitan Statistical Area as adjusted for household size.
- B. "City" means the City and County of Honolulu.
- C. "City Council" means the City Council of the City and County of Honolulu.
- D. "Department of Planning and Permitting" and "DPP" means the Department of Planning and Permitting of the City and County of Honolulu.
- E. "Developer" means the Laulima Development, LLC, a Hawaii Limited Liability Company.
- F. "Preliminary Plans" means the preliminary plans and outline specifications dated June 18, 2018, prepared for the Project by Architects Hawaii Limited, and submitted to the City Council on September 21, 2018.
- G. "Project" means the Hale Makana O Maili project. The Project involves the development of 52 apartment units (51 affordable rental units and one manager unit) in six two-story buildings; a resource center; 5,720-square

feet of common open space consisting of a park and community garden; and a surface parking lot with 71 off-street parking stalls. The Project also involves the retention and renovation of six of the 10 single-family dwellings that currently exist on the Project site and will be sold at market rate.

H. "Project Land" means that certain real property located at 87-037 Kulaaupuni Street, Waianae, Hawaii 96792, identified as Tax Map Key 8-7-001: 016 and more particularly described in Exhibit A, attached to this Agreement and made a part thereof.

I. "Resolution" means Resolution 18-206, CD1 adopted by City Council on _____.

4. RECITALS

A. The Developer requested that the City Council to exercise the authority stated in Chapter 201H of the Hawaii Revised Statutes ("HRS"), and any successor statute, granted to the City under the provisions of HRS Section 46-15.1, by exempting the Project from certain planning, zoning, construction standards of subdivisions, development and improvement of land, and the construction of units thereon, in order to accommodate development of the Project by the Developer on the Project Land as more particularly described in the Preliminary Plans.

B. The City Council approved the Preliminary Plans, which include the requested exemptions, by its adoption of Resolution 18-206, CD1 on _____, in furtherance of and consistent with the public purpose of providing affordable living opportunities.

5. DEVELOPER'S AGREEMENTS

The Developer agrees with the City as follows:

A. The Project consists of the following improvements:

- (1) Fifty-two apartment units located in six two-story buildings. Two Type 1 buildings have eight two-bedroom units and two three-bedroom units. Three Type 2 buildings have four one-bedroom units, four two-bedroom units, and one three-bedroom unit. One Type 2A building has four two-bedroom units on the second floor and one one-bedroom unit (manager's unit) and resource center on the ground floor. The resource center includes management offices, a multi-purpose room, a conference room, a restroom, a storage area, a laundry room, outdoor storage, and a maintenance shed. The apartments will consist of 14 one-bedroom units (including the manager's unit), 31 two-bedroom units, and seven three-bedroom

units. The apartment unit size and affordability are summarized as follows:

Table 1 - Type of Apartment Units

Apartment Unit Type	Number of Bedrooms	Unit Size (square feet)	Percent Affordable	Number of Units
A	1	550	100	13
B	2	730	100	31
C	3	950	100	7
Manager	1	730	-	1
Total				52

A secondary component of the Project is the retention and renovation of six existing single-family dwelling units located on the southwest corner of the Project Land. One of the dwellings will be relocated on the Project Land.

- (2) Fifty-one rental apartment units will meet the affordability requirements of HRS Chapter 201H. One unit will be a manager's unit. Affordability levels for the Project's affordable rental apartment units will range from 30 to 60 percent of the AMI. All affordable rental apartment units must remain affordable for not less than 65 years after the date when the unit is initially rented to a qualified renter. The affordability of the apartments at each affordability level is summarized below:

Table 2 - Affordability Level of Units Based on AMI

Unit Types	30% AMI	50% AMI	60% AMI	Subtotals
1-Bedroom	1	2	10	13
2-Bedroom	3	6	22	31
3-Bedroom	1	2	4	7
Totals	5	10	36	51

The above table does not include the six existing single-family dwellings on the Project Land that will be retained and renovated, and sold at market rate. Of the 58 total dwelling units in the Project, 51 new rental apartment units will be affordable.

Rental prices will be based on rates for the City and County of Honolulu published annually by Hawaii Housing Finance and

Development Corporation based on income levels and limits established by the U.S. Department of Housing and Urban Development, adjusted for household income, unit and family size, and utility allowance.

- (3) The Developer may condominiumize the 2.78-acre Project Land into two separate parcels or units.
 - (4) The Project includes a surface parking lot with 71 off-street parking stalls
 - (5) All loading and trash pick-up activities must be contained on the Project Land and adequate maneuvering space must be provided so that loading vehicles enter and exit the Project Land front first.
 - (6) The Developer shall adopt and maintain all landscape strips, vegetation, green storm water infrastructure, and street trees that are placed adjacent to the Project Land.
- B. Prior to the issuance of a (temporary) certificate of occupancy for the Project, the Developer shall submit to the Department of Planning and Permitting ("DPP") and the Department of Transportation Services ("DTS") for review and approval a traffic management plan ("TMP") for the Project that includes traffic demand management ("TDM") strategies to minimize the number of vehicular trips for daily activities and events (if any). TDM strategies should include informing residents of carpooling and ride sharing programs, transit incentives, installation of bicycle racks or bicycle parking areas, and other TDM measures.
- C. Prior to the issuance of any demolition or building permit for major Project construction work, the Developer shall submit to the DPP for review and approval a construction management plan ("CMP") that identifies the type, frequency, and routing of heavy trucks and related construction vehicles. Every effort must be made to minimize impacts from these vehicles and related construction activities. The CMP must identify and limit vehicular activity related to construction to periods outside of the peak periods of traffic, provisions for staging areas either on or off the Project Land for construction-related workers and vehicles to limit the use of on-street parking around the Project Land, and other mitigation measures related to traffic and potential neighborhood impacts. The Developer shall document the condition of roadways prior to the start of construction activities and provide remedial measures, as necessary, such as restriping, road resurfacing and or reconstruction if the condition of the roadways has deteriorated as a result of the related construction activities.

- D. Prior to the issuance of the (temporary) certificate of occupancy, the Developer shall provide to the DTS a map of the roadways studied in the Project's transportation assessment that categorizes each roadway by street type as described in Section 2.6 of the City and County of Honolulu Complete Streets Design Manual, and indicates roadway jurisdiction.
- E. The Developer shall investigate the feasibility of using non-potable water to irrigate the affordable rental apartment component of the Project. If non-potable water is either unavailable or infeasible, prior to using potable water for irrigation purposes, the Developer shall submit a report detailing irrigation demands and conclusions of the investigation to the Board of Water Supply.
- F. If, during construction, any previously unidentified archaeological sites or remains (such as artifacts, shell, bone, or charcoal deposits, human burials, rock, or coral alignments, pavings, or walls) are encountered, the Developer shall stop work and contact the State Department of Land and Natural Resources, State Historic Preservation Division ("SHPD") immediately. Work in the immediate area must be stopped until SHPD is able to assess the impact and make recommendations for mitigative action.
- G. The Developer shall furnish to the DPP evidence of a performance and payment bond provided by the general contractor for the Project.
- H. The Developer shall submit the following reports to the City subject to verification as reasonably requested by the City:
 - (1) A monthly status report on the progress of the construction of the Project, commencing at the start of construction and continuing on the first day of each calendar month thereafter until construction of the Project is completed;
 - (2) A final report to the City summarizing the work completed within 90 days after obtaining the last certificate of occupancy issued by the DPP for the Project; and
 - (3) An annual report for the Project covering the period commencing on a date to be agreed upon by the City and the Developer pertaining to the operation of the Project and the Developer's compliance with the terms of this Agreement.
- I. The Developer shall permit representatives or agents of the City to inspect the Project during normal construction hours with reasonable prior notice to the Developer and general contractor.

- J. The Developer shall permit representatives or agents of the City to inspect the Developer's records pertaining to the construction of the Project.
- K. The Developer shall permit representatives or agents of the City to conduct annual inspections after completion of the Project and to monitor the Developer's compliance with this Agreement and applicable laws, regulations, and ordinances, for purposes of determining:
 - (1) Whether the Developer has performed the terms of this Agreement, including but not limited to a determination verifying the income levels of tenants of the Project at the time of their initial occupancy and regular intervals thereafter;
 - (2) Whether the Developer has conformed to the standards of applicable statutes, rules, and regulations; and
 - (3) Whether the Developer is maintaining the Developer's capacity to implement the Project and conform to the terms of this Agreement in a timely manner.
- L. The Developer shall notify the City within 24 hours or as promptly as practicable if any lender shall declare the Developer to be in default.

6. CITY EXEMPTIONS

The City agrees with the developer that the exemptions granted in Resolution 18-206, CD1 shall apply to the Project.

7. CONDITION OF THE RESOLUTION

- A. If construction of the Project does not commence within 24 months after the effective date of Resolution 18-206, CD1, the exemptions granted by the resolution shall be null and void.
- B. If the Developer fails to complete construction of the Project, the exemptions granted by Resolution 18-206, CD1 shall be null and void.
- C. The exemptions granted by Resolution 18-206, CD1 are not transferable to any other land or property, not specifically described in Exhibit A.

8. CITY'S RELATIONSHIP TO THE DEVELOPER AND PROJECT

This Agreement shall not be construed as creating a partnership, joint venture, or other agency relationship between the City and the Developer. The City is not the developer of the Project and shall not be deemed to have assumed any liability

whatsoever with respect to the development, construction, ownership, management, and operation of the Project.

The Developer shall defend, indemnify, and hold the City harmless from any claim or demand made by any person or entity pertaining to the Project for death, personal injury, and property damage, including attorney's reasonable fees.

9. CITY'S RIGHTS AND REMEDIES:

The City, including the City Council, reserve all rights and remedies available to it in law or in equity if the Developer shall fail to perform any of the Developer's obligations in this Agreement and shall fail to correct such default within 60 days after written notice of the default from the City or such longer time as may be reasonably necessary to effect such cure in the event that such cure cannot be reasonably accomplished within said 60-day period, so long as the Developer shall commence efforts to cure within the 60-day period and diligently proceed with such cure.

10. MISCELLANEOUS TERMS

- A. Amendment. The provisions of this Agreement may be amended only by each party executing a subsequent written document that states each amended provision.
- B. Binding Effect. Upon its execution by each party, the Agreement shall become binding and enforceable according to its provisions. If more than one party is obligated to perform an act by any provisions stated in this Agreement, those parties shall be jointly and severally liable and obligated for the performance of those acts. The rights and obligations of each party named in this Agreement shall bind and inure to the benefit of each party, respectively, and the respective heirs, personal representatives, successors, and assigns of each party.
- C. Applicable Law. The provisions of this Agreement shall be interpreted in accordance with the law of the State of Hawaii as that law is construed and amended from time to time.
- D. Authorization. Each party warrants to each other party that the individuals executing this instrument are authorized to do so.
- E. Consent; Subsequent Agreement. If a subsequent consent required of any party by the provisions of this Agreement is requested by a party, it shall not be unreasonably withheld by the party to whom the request is made.

- F. Construction. Each party named in this Agreement acknowledges and agrees that: (i) each party is of equal bargaining strength; (ii) each party has actively participated in the negotiation and preparation of this Agreement; (iii) each party has consulted with their respective legal counsel and other professional advisors as each party has deemed appropriate; (iv) each party and the party's legal counsel and advisors have reviewed this Agreement; and (v) each party has agreed to be bound by the terms stated in this Agreement following its review and obtaining advice.
- G. Counterparts. This Agreement may be executed by the parties in counterparts. The counterparts executed by the parties named in this Agreement and properly acknowledged, if necessary, taken together, shall constitute a single Agreement.
- H. Dates. If any dates stated in this Agreement fall on a Saturday, Sunday, or legal holiday observed by the City, such date shall be the next following business day.
- I. Defined Terms. Certain terms where they initially are used in this Agreement are set off by quotation marks enclosed in parentheses and are subsequently capitalized. Those designated terms shall have the same meaning throughout this Agreement, unless otherwise specifically stated or clearly inappropriate in the context.
- J. Force Majeure. If any party is prevented from performing its obligations stated in this Agreement by any event not within the reasonable control of that party, including, but not limited to an act of God, public enemy, or war, fire, an act or failure to act of a government entity, unavailability of materials, or actions by or against labor unions, it shall not be in default in the performance of its obligations stated in this Agreement.

PROVIDED, HOWEVER, that any party delayed by such an event shall request an extension of time to perform its obligations stated in this Agreement by notifying the party to which it is obligated within ten days following the event. If the notified party agrees that the event was the cause of the delay, the time to perform the obligations stated in this Agreement shall be extended by the number of days of delay caused by the event. If the required notice is not given by the delayed party, no time extension shall be granted.

- K. Gender; Number. In this Agreement, the use of any gender shall include all genders and the use of number in reference to nouns and pronouns shall include the singular or plural, as the context dictates.

- L. Integration. This Agreement contains all of the provisions of the agreement between the parties pertaining to the subject matter stated in this Agreement. Each party acknowledges that no person or entity made any oral or written representation on which a party has relied on as a basis to enter into the agreement stated in this Agreement, which is not included as a provision in it.
- M. Memorandum. If required by the provisions of this Agreement or requested by any party, a memorandum of this Agreement shall be executed by the parties, the signatures properly acknowledged by a Notary Public, and recorded in the Bureau of Conveyances or Land Court, State of Hawaii, or both as appropriate.
- N. No Drafter. No party shall be deemed to have drafted this Agreement. No provision stated in this Agreement shall be construed against any party as its drafter.
- O. Notice. Any notice required or permitted by the provisions of this Agreement to be given by a party to any other party, shall be writing and either shall be delivered personally or mailed postage prepaid by certified mail, return receipt requested, to each other party at the address and to the person designated by each party, stated below. No other method of notice shall be effective.

(1) CITY AND COUNTY OF HONOLULU:

Department of Planning and Permitting
650 South King Street, 7th Floor
Honolulu, Hawaii 96813
Attention: Acting Director

(2) LAULIMA DEVELOPMENT, LLC

Laulima Development, LLC
1188 Bishop Street, Suite 907
Honolulu, Hawaii 96813
Attention: Manager

- P. Paragraph Titles. The titles of provisions stated in this Agreement are included only for the convenience of the parties. They shall not be considered in the construction of the provisions stated in this Agreement.
- Q. Required Actions by the Parties. Each party named in this Agreement agrees to execute the Agreement and to diligently undertake the acts necessary to consummate the transaction contemplated by this Agreement.

- R. Severability. If any provision stated in this Agreement subsequently is determined to be invalid, illegal, or unenforceable, that determination shall not affect the validity, legality, or enforceability of the remaining provisions stated in this Agreement, unless that effect is made impossible by the absence of the omitted provision.
- S. Survival. Any representation and warranty stated in this Agreement made by a party shall survive the termination of the agreement stated in this instrument, unless otherwise specifically stated.

[The remainder of this page is intentionally left blank. The signature page follows.]

IN WITNESS WHEREOF, the undersigned parties have signed this instrument as of the date first written above.

DEVELOPER:

LAULIMA DEVELOPMENT, LLC
a Hawaii Limited Liability Company

By _____
Kali Watson
Its Manager

APPROVED AS TO FORM AND
LEGALITY:

CITY:

CITY AND COUNTY OF HONOLULU

By _____
Deputy Corporation Counsel
for the City and County of
Honolulu

By _____
Kathy K. Sokugawa
Its Acting Director of
Planning and Permitting

STATE OF HAWAII)
) SS.
CITY & COUNTY OF HONOLULU)

On this _____ day of _____, 201____, before me personally appeared _____, to me personally known, who, being by me duly sworn or affirmed did say that such person executed the foregoing instrument as the free act and deed of such person, and if applicable in the capacity shown, having been duly authorized to execute such instrument in such capacity.

Notary Public, State of Hawai'i

Printed Name: _____

My commission expires: _____

NOTARY CERTIFICATION STATEMENT

Document Identification or Description:

Doc. Date: _____ or ☐ Undated at time of notarization.

No. of Pages: _____

Jurisdiction: _____ Circuit
(in which notarial act is performed)

Signature of Notary

Date of Notarization and
Certification Statement

Printed Name of Notary

STATE OF HAWAII)
) SS.
CITY & COUNTY OF HONOLULU)

On this day of _____, 201_, before me personally appeared _____, to me personally known, who, being by me duly sworn or affirmed did say that such person executed the foregoing instrument as the free act and deed of such person, and if applicable in the capacity shown, having been duly authorized to execute such instrument in such capacity.

Notary Public, State of Hawai'i

Printed Name: _____

My commission expires: _____

NOTARY CERTIFICATION STATEMENT

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Doc. Date: _____ or ☐ Undated at time of notarization.

No. of Pages: _____

Jurisdiction: _____ Circuit
(in which notarial act is performed)

Signature of Notary

Date of Notarization and
Certification Statement

Printed Name of Notary

EXHIBIT A

Legal Description of the Property